

SERVED: March 26, 1992

NTSB Order No. EA-3524

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 19th day of March, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

Docket

SE-9861

JOHN D. THOMPSON,

Respondent.

ORDER DENYING RECONSIDERATION

Respondent has filed a petition for reconsideration and stay¹ of NTSB Order No. EA-3457, served December 23, 1991. That order granted the Administrator's appeal by reversing the law judge's initial decision and by affirming, with a modification, the Administrator's suspension of respondent's airline transport pilot certificate.²

Respondent in his petition in effect argues that the Board was not free to evaluate the evidence of record for itself, but was somehow limited to the law judge's analysis of the evidentiary submissions. Moreover, he suggests that

¹The effective date of a Board order is automatically stayed by the filing of a petition for reconsideration. See Rule 821.50(f) of the Board's Rules of Practice, 49 CFR Part 821.

²The Administrator has filed a reply to the respondent's petition for reconsideration of the Board's order.

we misconstrued the law judge's findings. Respondent's position, in our judgment, is without merit because it is premised on a misapprehension of the scope of the Board's role on review. Rule 821.49 of the Board's Rules of Practice provides, in pertinent part:

On appeal, the Board will consider. . . [whether] the findings of fact... [are] supported by a preponderance of the evidence If the Board determines that the law judge erred in any respect. . the Board may make any necessary findings and may issue an order in lieu of the law judge's order

The issue before the Board in the instant case was whether the evidence was sufficient to establish that respondent was careless in violation of FAR §91.10 when he taxied his aircraft into an airport fuel pump. Our independent evaluation of the testimony and the evidence presented by the parties convinced us that it was. Respondent's disagreement with our legal conclusion in that regard neither identifies error in our original decision nor otherwise presents a valid basis for reconsideration thereof, as it is the Board's prerogative to make findings and reach conclusions different from those of the law judge and, when we do so, to issue an order overturning his initial decision and order.

ACCORDINGLY, IT IS ORDERED THAT:

The petition for reconsideration is denied.

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above order.